

HOUSE BUSINESS AND INDUSTRY COMMITTEE SUBSTITUTE FOR
HOUSE BILL 705

49TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2009

AN ACT

RELATING TO PUBLIC PROCUREMENT; INCREASING CERTAIN THRESHOLD
VALUES FOR PROCUREMENT ACTIONS; AMENDING SECTIONS OF THE NMSA
1978.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 13-1-60 NMSA 1978 (being Laws 1984,
Chapter 65, Section 33) is amended to read:

"13-1-60. DEFINITION--HEAVY ROAD EQUIPMENT.--"Heavy road
equipment" means any motor-driven vehicle or apparatus capable
of use for earth moving or mixing components [~~which~~] that has
an aggregate value or price of over [~~one thousand dollars~~
~~(\$1,000)] fifty thousand dollars (\$50,000)."~~

Section 2. Section 13-1-99 NMSA 1978 (being Laws 1984,
Chapter 65, Section 72, as amended) is amended to read:

"13-1-99. EXCLUDED FROM CENTRAL PURCHASING THROUGH THE

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1 STATE PURCHASING AGENT.--Excluded from the requirement of
2 procurement through the state purchasing agent but not from the
3 requirements of the Procurement Code are the following:

4 A. procurement of professional services;

5 B. small purchases having a value not exceeding
6 ~~[one thousand five hundred dollars (\$1,500)]~~ twenty thousand
7 dollars (\$20,000);

8 C. emergency procurement;

9 D. procurement of highway construction or
10 reconstruction by the department of transportation;

11 E. procurement by the judicial branch of state
12 government;

13 F. procurement by the legislative branch of state
14 government;

15 G. procurement by the boards of regents of state
16 educational institutions named in Article 12, Section 11 of the
17 constitution of New Mexico;

18 H. procurement by the state fair commission of
19 tangible personal property, services and construction under
20 twenty thousand dollars (\$20,000);

21 I. purchases from the instructional material fund;

22 J. procurement by all local public bodies;

23 K. procurement by regional education cooperatives;

24 L. procurement by charter schools;

25 M. procurement by each state health care

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1 institution that provides direct patient care and that is, or a
 2 part of which is, medicaid certified and participating in the
 3 New Mexico medicaid program; and

4 N. procurement by the public school facilities
 5 authority."

6 Section 3. Section 13-1-146 NMSA 1978 (being Laws 1984,
 7 Chapter 65, Section 119, as amended) is amended to read:

8 "13-1-146. REQUIREMENT FOR BID SECURITY.--Bid security
 9 shall be required of bidders or offerors for construction
 10 contracts when the price is estimated by the procurement
 11 officer to exceed [~~twenty-five thousand dollars (\$25,000)~~]
 12 sixty thousand dollars (\$60,000). Bid security in an amount
 13 equal to at least five percent of the amount of the bid shall
 14 be a bond provided by a surety company authorized to do
 15 business in this state, or the equivalent in cash, or otherwise
 16 supplied in a form satisfactory to the state agency or a local
 17 public body."

18 Section 4. Section 13-1-155 NMSA 1978 (being Laws 1984,
 19 Chapter 65, Section 128, as amended) is amended to read:

20 "13-1-155. PROCUREMENT OF USED ITEMS--APPRAISAL
 21 REQUIRED--COUNTY ROAD EQUIPMENT EXCEPTION FOR AUCTIONS.--

22 A. A central purchasing office, when procuring used
 23 items of tangible personal property the estimated cost of which
 24 exceeds [~~five thousand dollars (\$5,000)~~] twenty thousand
 25 dollars (\$20,000), shall request bids as though the items were

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1 new, adding specifications that permit used items under
2 conditions to be outlined in the bid specifications, including
3 but not limited to requiring a written warranty for at least
4 ninety days after date of delivery and an independent
5 "certificate of working order" by a qualified mechanic or
6 appraiser.

7 B. Notwithstanding the provisions of Subsection A
8 of this section, the purchasing office for a county may
9 purchase, at public or private auctions conducted by
10 established, recognized commercial auction companies, used
11 heavy equipment having an estimated cost that exceeds [~~five~~
12 ~~thousand dollars (\$5,000)] twenty thousand dollars (\$20,000)
13 for use in construction and maintenance of county streets,
14 roads and highways, subject to the following provisions:~~

15 (1) the commercial auction company shall have
16 been in business for at least three years preceding the date of
17 purchase and shall conduct at least five auctions annually;

18 (2) the value of each piece of equipment shall
19 be appraised prior to the auction by a qualified disinterested
20 appraiser retained and paid by the county, who shall make a
21 written appraisal report stating the basis for the appraisal,
22 including the age, condition and comparable sales, and stating
23 that the appraiser has exercised [~~his~~] independent judgment
24 without prior understanding or agreement with any person as to
25 a target value or range of value;

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1 (3) an independent "certificate of working
2 condition" shall be obtained prior to the auction from a
3 qualified mechanic who shall have made a detailed inspection of
4 each major working or major functional part and certified the
5 working condition of each; and

6 (4) the price paid, including all auction fees
7 and buyer's surcharges, shall not exceed the appraised value."

8 Section 5. Section 13-1-156 NMSA 1978 (being Laws 1984,
9 Chapter 65, Section 129, as amended) is amended to read:

10 "13-1-156. TRADE OR EXCHANGE OF USED ITEMS--APPRAISAL
11 REQUIRED.--

12 A. A central purchasing office, when trading in or
13 exchanging used items of tangible personal property the
14 estimated value of which exceeds [~~five thousand dollars~~
15 ~~(\$5,000)~~] twenty thousand dollars (\$20,000) as part-payment on
16 the procurement of new items of tangible personal property,
17 shall:

18 (1) have an independent appraisal made of the
19 items to be traded in or exchanged. The appraisal shall be in
20 writing, shall be made part of the procurement file and shall
21 be a public record. The invitation for bids or request for
22 proposals shall contain notice to prospective bidders or
23 offerors of the description and specifications of the items to
24 be traded in or exchanged, the appraised value of the items to
25 be traded in or exchanged and the location where the items to

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1 be traded in or exchanged may be inspected; or

2 (2) have two written quotes for purchase of
3 the property at a specified price.

4 B. Award shall be based upon the net bid. Bidders
5 or offerors shall compute their net bid or offer by deducting
6 the appraised value or highest quote of the items to be traded
7 in or exchanged from the gross bid or offer on the new items of
8 tangible personal property to be procured. If an amount
9 offered in trade is less than the appraised value or the
10 highest quote but is found to be a fair reflection of the
11 current market, representative of the condition of the items of
12 tangible personal property and in the best interest of the
13 agency, the bid or offer may be accepted. Documentation of the
14 terms of acceptance shall be in writing, shall be made a part
15 of the procurement file and shall be a public record."

16 Section 6. Section 13-4-13.1 NMSA 1978 (being Laws 2004,
17 Chapter 89, Section 1, as amended) is amended to read:

18 "13-4-13.1. PUBLIC WORKS CONTRACTS--REGISTRATION OF
19 CONTRACTORS AND SUBCONTRACTORS.--

20 A. Except as otherwise provided in this subsection,
21 in order to submit a bid valued at more than [~~fifty thousand~~
22 ~~dollars (\$50,000)~~] sixty thousand dollars (\$60,000) in order to
23 respond to a request for proposals or to be considered for
24 award of any portion of a public works project greater than
25 [~~fifty thousand dollars (\$50,000)~~] sixty thousand dollars

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1 (\$60,000) for a public works project that is subject to the
2 Public Works Minimum Wage Act, the contractor, serving as a
3 prime contractor or not, shall be registered with the labor
4 [~~and industrial division of the labor~~] relations division of
5 the workforce solutions department. Bidding documents issued
6 or released by a state agency or political subdivision of the
7 state shall include a clear notification that each contractor,
8 prime contractor or subcontractor is required to be registered
9 pursuant to this subsection. The provisions of this section do
10 not apply to vocational classes in public schools or public
11 post-secondary educational institutions.

12 B. The state or any political subdivision of the
13 state shall not accept a bid on a public works project subject
14 to the Public Works Minimum Wage Act from a prime contractor
15 that does not provide proof of required registration for
16 itself.

17 C. Contractors and subcontractors may register with
18 the division on a form provided by the division and in
19 accordance with [~~labor~~] workforce solutions department rules.
20 The division shall charge an annual registration fee of two
21 hundred dollars (\$200). The division shall issue to the
22 applicant a certificate of registration within fifteen days
23 after receiving from the applicant the completed registration
24 form and the registration fee.

25 D. Registration fees collected by the division

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1 shall be deposited in the labor enforcement fund."

2 Section 7. Section 13-6-1 NMSA 1978 (being Laws 1961,
3 Chapter 100, Section 1, as amended) is amended to read:

4 "13-6-1. DISPOSITION OF OBSOLETE, WORN-OUT OR UNUSABLE
5 TANGIBLE PERSONAL PROPERTY.--

6 A. The governing authority of each state agency,
7 local public body, school district and state educational
8 institution may dispose of any item of tangible personal
9 property belonging to that authority and delete the item from
10 its public inventory upon a specific finding by the authority
11 that the item of property is:

12 (1) of a current resale value of [~~five~~
13 ~~thousand dollars (\$5,000)] twenty thousand dollars (\$20,000) or
14 less; and~~

15 (2) worn-out, unusable or obsolete to the
16 extent that the item is no longer economical or safe for
17 continued use by the body.

18 B. The governing authority shall, as a prerequisite
19 to the disposition of any items of tangible personal property:

20 (1) designate a committee of at least three
21 officials of the governing authority to approve and oversee the
22 disposition; and

23 (2) give notification at least thirty days
24 prior to its action making the deletion by sending a copy of
25 its official finding and the proposed disposition of the

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1 property to the state auditor and the appropriate approval
2 authority designated in Section 13-6-2 NMSA 1978, duly sworn
3 and subscribed under oath by each member of the authority
4 approving the action.

5 C. A copy of the official finding and proposed
6 disposition of the property sought to be disposed of shall be
7 made a permanent part of the official minutes of the governing
8 authority and maintained as a public record subject to the
9 Inspection of Public Records Act.

10 D. The governing authority shall dispose of the
11 tangible personal property by negotiated sale to any
12 governmental unit of an Indian nation, tribe or pueblo in New
13 Mexico or by negotiated sale or donation to other state
14 agencies, local public bodies, school districts, state
15 educational institutions or municipalities or through the
16 central purchasing office of the governing authority by means
17 of competitive sealed bid or public auction or, if a state
18 agency, through the surplus property bureau of the
19 transportation services division of the general services
20 department.

21 E. A state agency shall give the surplus property
22 bureau of the transportation services division of the general
23 services department the right of first refusal when disposing
24 of obsolete, worn-out or unusable tangible personal property of
25 the state agency.

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1 F. If the governing authority is unable to dispose
2 of the tangible personal property pursuant to Subsection D or E
3 of this section, the governing authority may sell or, if the
4 property has no value, donate the property to any organization
5 described in Section 501(c)(3) of the Internal Revenue Code of
6 1986.

7 G. If the governing authority is unable to dispose
8 of the tangible personal property pursuant to Subsection D, E
9 or F of this section, it may order that the property be
10 destroyed or otherwise permanently disposed of in accordance
11 with applicable laws.

12 H. If the governing authority determines that the
13 tangible personal property is hazardous or contains hazardous
14 materials and may not be used safely under any circumstances,
15 the property shall be destroyed and disposed of pursuant to
16 Subsection G of this section.

17 I. No tangible personal property shall be donated
18 to an employee or relative of an employee of a state agency,
19 local public body, school district or state educational
20 institution; provided that nothing in this subsection precludes
21 an employee from participating and bidding for public property
22 at a public auction.

23 J. This section shall not apply to any property
24 acquired by a museum through abandonment procedures pursuant to
25 the Abandoned Cultural Properties Act."

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1 Section 8. Section 13-6-2 NMSA 1978 (being Laws 1979,
 2 Chapter 195, Section 3, as amended) is amended to read:

3 "13-6-2. SALE OF PROPERTY BY STATE AGENCIES OR LOCAL
 4 PUBLIC BODIES--AUTHORITY TO SELL OR DISPOSE OF PROPERTY--
 5 APPROVAL OF APPROPRIATE APPROVAL AUTHORITY.--

6 A. Providing a written determination has been made,
 7 a state agency, local public body, school district or state
 8 educational institution may sell or otherwise dispose of real
 9 or tangible personal property belonging to the state agency,
 10 local public body, school district or state educational
 11 institution.

12 B. A state agency, local public body, school
 13 district or state educational institution may sell or otherwise
 14 dispose of real property:

15 (1) by negotiated sale or donation to an
 16 Indian nation, tribe or pueblo located wholly or partially in
 17 New Mexico, or to a governmental unit of an Indian nation,
 18 tribe or pueblo in New Mexico, that is authorized to purchase
 19 land and control activities on its land by an act of congress
 20 or to purchase land on behalf of the Indian nation, tribe or
 21 pueblo;

22 (2) by negotiated sale or donation to other
 23 state agencies, local public bodies, school districts or state
 24 educational institutions;

25 (3) through the central purchasing office of

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1 the state agency, local public body, school district or state
2 educational institution by means of competitive sealed bid,
3 public auction or negotiated sale to a private person or to an
4 Indian nation, tribe or pueblo in New Mexico; or

5 (4) if a state agency, through the surplus
6 property bureau of the transportation services division of the
7 general services department.

8 C. A state agency shall give the surplus property
9 bureau of the transportation services division of the general
10 services department the right of first refusal to dispose of
11 tangible personal property of the state agency. A school
12 district may give the surplus property bureau the right of
13 first refusal to dispose of tangible personal property of the
14 school district.

15 D. Except as provided in Section 13-6-2.1 NMSA 1978
16 requiring state board of finance approval for certain
17 transactions, sale or disposition of real or tangible personal
18 property having a current resale value of more than [~~five~~
19 ~~thousand dollars (\$5,000)] twenty thousand dollars (\$20,000)
20 may be made by a state agency, local public body, school
21 district or state educational institution if the sale or
22 disposition has been approved by the state budget division of
23 the department of finance and administration for state
24 agencies, the local government division of the department of
25 finance and administration for local public bodies, the public~~

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1 education department for school districts and the higher
2 education department for state educational institutions.

3 E. Prior approval of the appropriate approval
4 authority is not required if the tangible personal property is
5 to be used as a trade-in or exchange pursuant to the provisions
6 of the Procurement Code.

7 F. The appropriate approval authority may condition
8 the approval of the sale or other disposition of real or
9 tangible personal property upon the property being offered for
10 sale or donation to a state agency, local public body, school
11 district or state educational institution.

12 G. The appropriate approval authority may credit a
13 payment received from the sale of such real or tangible
14 personal property to the governmental body making the sale.
15 The state agency, local public body, school district or state
16 educational institution may convey all or any interest in the
17 real or tangible personal property without warranty.

18 H. This section does not apply to:

- 19 (1) computer software of a state agency;
20 (2) those institutions specifically enumerated
21 in Article 12, Section 11 of the constitution of New Mexico;
22 (3) the New Mexico state police division of
23 the department of public safety;
24 (4) the state land office or the department of
25 transportation;

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1 (5) property acquired by a museum through
2 abandonment procedures pursuant to the Abandoned Cultural
3 Properties Act;

4 (6) leases of county hospitals with any person
5 pursuant to the Hospital Funding Act;

6 (7) property acquired by the economic
7 development department pursuant to the Statewide Economic
8 Development Finance Act; and

9 (8) the state parks division of the energy,
10 minerals and natural resources department."

11 Section 9. EFFECTIVE DATE.--The effective date of the
12 provisions of this act is July 1, 2009.